



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,785	01/12/2007	Jacques-Philippe Moulinoux	U16.12-0006	7755
27367	7590	05/08/2009	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402			KLINKEL, KORTNEY L	
			ART UNIT	PAPER NUMBER
			1611	
			MAIL DATE	DELIVERY MODE
			05/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/566,785	MOULINOUX ET AL.
	Examiner	Art Unit
	Kortney L. Kinkel	1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 January 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-32 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Election/Restrictions

NOTE: Claims 13-32 provide for the use according to claim 1. However, the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Furthermore, the claimed invention outlined by claims 13-32 is directed to non-statutory subject matter. The claimed invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter). For the purposes of restriction, since claims 13-32 are dependent upon claim 1 which recites a process comprising using, claims 13-32 are being treated as if they also read on a process comprising using. Please note too, however, that "a process comprising using" is also indefinite as it is unclear if a method of treatment, a process for the preparation or some other process/method is intended to be sought for patent protection. Claims 1-12 do not set forth any steps to be followed in the claimed process. Examiner respectfully requests appropriate corrective action.

Species Election

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species listed below do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The special technical feature linking the genera is a composition for human consumption containing less than 1600 picomoles of polyamines to combat a syndrome or a pathology in which the NR2-B sub-unit of the N-methyl-D-aspartate receptor is involved. This element cannot be a special technical feature under PCT Rule 13.2 because the element is shown in the prior art.

In the present case, Kergozien et al. ("Polyamine Deprivation Provokes an Antalgic Effect" Life Sciences 1996, 58(24), 2209-2215, as per Applicant's IDS) teaches a polyamine poor diet, namely a diet containing less than 10 ug/kg (see 3rd paragraph of Methods section page 2210). This diet is useful to treat pain. Pain, as stated in the instant specification and claims is a type of syndrome or a pathology in which the NR2-B sub-unit of the N-methyl-D-aspartate receptor. As a result, no special technical features exist among the claims because the inventions fail to make a contribution over the prior art.

The species are as follows:

Species of composition containing less than 1600 picomoles of polyamines **and** species of syndrome or pathology in which the NR2-B sub-unit of the N-methyl-D-aspartate receptor is involved.

Applicant is required, in reply to this action, to elect a single species of composition and syndrome to which the claims shall be restricted if no generic claim is

finally held to be allowable. For the composition, applicant is required to elect the following:

- a) the presence or absence of at least one inhibitor of intracellular synthesis of polyamine of claims 17-20. In the event that the presence of at least one inhibitor of intracellular synthesis of polyamine is elected, the specific type of inhibitor, for example that of claim 20, must also be elected,
- b) the presence or absence of at least one antibiotic, as in claim 21, **and**
- c) the presence or absence of vitamins as in claims 16 and 22.

For the syndrome or pathology, applicant is required to elect a specific syndrome or pathology of those recited in claims 2-12.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: claim 1.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Due to the complicated nature of the restriction, the restriction requirement is being made via written correspondence in lieu of a telephone interview.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kortney Klinkel whose telephone number is (571)270-5239. The examiner can normally be reached on Monday-Friday 8am to 5pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached at (571)272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Application/Control Number: 10/566,785
Art Unit: 1611

Page 6

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KLK

/Sharmila Gollamudi Landau/
Supervisory Patent Examiner, Art Unit 1611